

APPEAL NO. 022113  
FILED OCTOBER 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 5, 2002. In Texas Workers' Compensation Commission Appeal No. 021080, decided June 24, 2002, the Appeals Panel remanded this case because the audio tape of the hearing was not included in the record on appeal. The hearing officer recites that the audiotape recording of the April 5, 2002, hearing was located and that no further hearing was held.

The hearing officer reissued his decision which is before us now. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that had the claimant sustained a compensable injury she would have been entitled to temporary income benefits (TIBs) beginning on November 30, 2001, and continuing through the date of the CCH (April 5, 2002); and that the respondent (carrier) is liable for all benefits, both medical and income benefits, which accrued between \_\_\_\_\_, and January 9, 2002, the date the carrier filed a notice of denial of benefits, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3).

The claimant again appeals the injury and disability determinations on sufficiency grounds (including an addendum which had not been timely filed in Appeal No. 021080 but is timely in this case). In addition the claimant asserts that under "Rule 124.3 the Insurance Carrier owes all benefits for the full period under the Act." (Emphasis in the original.) Although the carrier had appealed the timely dispute of compensability issue in Appeal No. 021080, in this case, the record does not contain either an appeal or a response to the claimant's appeal by the carrier.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that she was employed as a part-time customer service employee of a retail store and on \_\_\_\_\_, felt a "twitch" between her shoulders as she reached down to move some rolls of wrapping paper. As the hearing officer notes some early medical reports are at variance with the claimant's testimony. The hearing officer set out the testimony and evidence in some detail in his Statement of the Evidence and Findings of Fact

Much, if not most, of the claimant's case rests on the credibility assigned to her testimony. We have frequently noted that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established.

Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The claimant's appeal asks us to apply Rule 124.3 and award her full benefits. At the time the hearing officer originally decided this case the Texas Supreme Court case of Continental Casualty Company v. Downs, (Case No. 00-1309, decided June 6, 2002) had not yet become final. The Downs decision has become final along with the requirement to adhere to the seven-day "pay or dispute" provision. In this case the parties stipulated that the carrier received its first written notice of the claimant's alleged injury on December 13, 2001, and that the carrier did not file its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) disputing compensability until January 9, 2002. Consequently the carrier failed to comply with the pay-or-dispute-within-seven-days provision of Section 409.021(a) and thereby lost the right to contest compensability pursuant to Downs. The hearing officer also had made a determination that had the claimant sustained a compensable injury, she would have been entitled to TIBs beginning on \_\_\_\_\_, and continuing through the date of the CCH. In that we are holding that the claimant sustained a compensable injury by operation of law (applying Downs to the stipulated facts) the claimant had disability from \_\_\_\_\_, and continuing to the date of the CCH and is entitled to all medical and income benefits warranted. We reverse so much of the hearing officer's decision as limits the claimant's medical and income benefits to the period between \_\_\_\_\_, and January 9, 2002, and render a new decision that the claimant is entitled to all benefits due for a compensable injury.

The hearing officer's decision is affirmed in part and reversed and rendered in part, as set out above.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
ACE USA  
6600 E. CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge